February 5, 2008

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Further Notice of Proposed Rulemaking Associated with Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units; MB Docket No. 07-51*

Dear Commissioners:

In the Further Notice of Proposed Rulemaking Associated with the Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units, released November 17, 2007, the Commission is calling for comments regarding the prohibition of exclusive marketing and bulk billing arrangements. This Comment, filed by MDU Communications International, Inc., addresses the issue of exclusive access provisions in service agreements between Private Cable Operators ("PCOs") and owners of multi-dwelling unit properties ("MDUs").

MDU Communications International, Inc. (MDTV:OB) is a publicly traded corporation that provides video services to some 600 multi-family properties (encompassing 130,000 passed units) serving 65,000 subscribers located in the Northeast, Southeast and Midwest regions of the United States. Our properties represent a combination of owner occupied condominiums, rental units, university residences, care facilities and seasonal communities signed to bulk, exclusive and competitive type access agreements.

Our ability to sign exclusive access agreements, and to a similar extent bulk access agreements, has been, and will continue to be, an essential component in remaining a strong and viable alternative to franchised cable, as well as traditional telcos now entering into the video services industry. To maintain this market presence, and thus an alternative to franchised cable, we must attract the necessary financing to fund operations and growth. Exclusive and bulk agreements provide us with rates of return that do attract necessary funds. We have invested approximately $40M in capital over the past few years and despite our significant property build out to date, we have a long way to go prior to realizing even a fraction of the economies of scale required to realize long term profitable growth to compete with the franchise cable and teleco providers in the MDU market.

Historically, traditional franchise cable and telco providers have used their market dominance and financial leverage to engage in questionable pricing practices while delivering poor to mediocre customer service. Today, their tactics have changed little and we routinely see further questionable practices including the "tied selling" of services - all to the detriment of MDU residents seeking alternatives.

Quite simply, the more "exclusive" agreement properties we deploy (the same can be said about bulk agreements), the more "competitive" type properties we can deploy (properties where we co-exist with both franchise cable and/or teleco providers). Without this "cross subsidization" of exclusive and non-exclusive property deployments, it is very unlikely that competitive deployments could be financed on any consistent basis, and a PCO "competitive only" business model is not sustainable in the MDU market considering the large initial upfront investment. The reasons are as follows:

1. Higher subscriber penetration rates achieved in exclusive property deployments provide a rate of return on investment ("ROI") that will attract financing from banks or capital from other sources. However, the ROI is a factor of revenue which is tied to the penetration rate (number of subscribers divided by total number of units in the property) and subscriber acquisition cost ("SAC"), which is primarily the fixed cost to install a system in an MDU. A lower penetration rate results in a higher SAC, and thus reduced ROI. An exclusive deployment for us generates an approximate 75% penetration rate while a competitive deployment may generate a much lower penetration rate of approximately 20-25%. Therefore, the SAC in a competitive deployment is significantly greater (two or three times higher than an exclusive deployment) and the ROI is significantly lower (usually half that or less of an exclusive). Most importantly, the ROI is well below that which would attract any third party financing. Without the appropriate mix of properties (bulk, exclusive and competitive), new deployments by PCOs would be extremely unlikely as they would not meet any reasonable financing criteria.

2. Exclusive agreements are integral for PCOs to realize economies of scale that can only be achieved at certain subscriber thresholds. In our case, we achieve financial breakeven in a region (office) at approximately 10,000 subscribers. The mix of property deployments (as identified in paragraph 1, above) allows us to achieve this goal (which triggers financing for new property deployments) by wiring approximately 20,000 units. In the absence of exclusive properties, our property build out would need to increase from approximately 20,000 units to approximately 50,000 units in order to serve the same number of subscribers (assuming a 20% penetration rate in competitive properties). This has a significant negative impact on the ROI. Lack of exclusive deployments would also destroy the economies of scale we need to provide similar levels of marketing, service and support to exclusive properties as competitive properties, because we would have only one third of the number of subscribers generating revenue in competitive properties. Quite simply, the absence of exclusive agreements strongly inhibits the ability of a PCO to obtain economies of scale, and thus financing.

3. Franchise cable and telco providers, with their large war chests, now routinely bundle broadband and voice service (and increasingly wireless services) with their video offerings and provide free months of service, initial discounts and even free televisions to attract subscribers. While this may seem to the benefit of subscribers in the short term, it inhibits a PCO from obtaining the necessary penetration rates within its properties when competing with cable and telcos, sometimes to the point where providing services at all is not cost effective. Moreover, we have learned from deploying to hundreds of properties that once we begin to provide competitive services to a property where cable or telcos are already an incumbent, they routinely provide other free/discount services to their video subscribers in order to thwart our marketing efforts. The end result is lower penetration rates and our fixed costs take significantly longer to recover, thus preventing us from deploying new broadband or other services within the property, or from deploying service to other new properties. The end result is lack of substantive competition.

4. Property owners, managers and residents routinely use the existence of PCOs to leverage the franchise cable and telco providers into providing more competitive rates and better customer service. In the absence of the threat of signing an exclusive agreement with a PCO, this leverage would be lost.

Overall, our experience with the capital markets, as one of the oldest PCOs in the industry, clearly indicates a PCOs ability to finance growth is directly related to the longevity and size of revenue streams and the resulting economies of scale. These factors are significantly and positively influenced by the existence of exclusivity provisions in access agreements. Conversely, without these revenue streams and economies, a PCO can not in any way be a serious market competitor with franchised cable or the telcos.

MDU Communications International, Inc. hereby urges the Commission to maintain the validity of exclusive access and exclusive marketing provisions for PCOs so that they may provide competitive services to a unique market in need of competitive alternatives.

Yours very truly,

Sheldon Nelson
President and Chief Executive Officer
MDU Communications International, Inc.